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**IN THE
COURT OF APPEALS OF INDIANA**

GARY B. SEGER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 82A05-0609-CR-533

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Mary Margaret Lloyd, Judge
Cause No. 82D02-0506-FD-496

March 18, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Gary Seger (“Seger”) pleaded guilty in Vanderburgh Superior Court to Class D felony possession of methamphetamine and Class B misdemeanor unlawful use of police radio. Seger was ordered to serve an aggregate of eighteen months on electronic home detention (“EHD”). The trial court subsequently revoked Seger’s placement on EHD and ordered him to serve the balance of his sentence in the Department of Correction. Seger argues that the trial court abused its discretion when it revoked his EHD placement and ordered the balance of the sentence to be served in the Department of Correction. We affirm.

Facts and Procedural History

On February 21, 2006, Seger’s wife obtained a protective order against Seger. The protective order prohibited Seger from contacting his wife and it remained in effect until February 21, 2008. Seger was aware of the imposition of the protective order.

On March 13, 2006, Seger pleaded guilty to Class D felony possession of methamphetamine and Class B misdemeanor unlawful use of police radio and the trial court sentenced him to eighteen months on EHD through Vanderburgh County Community Corrections (“VCCC”). Seger’s community corrections agreement required that he “not engage in any criminal activity or any type of civil disobedience.” Appellant’s App. p. 46. Seger began EHD on June 6, 2006.

On July 27, 2006, VCCC filed a petition to revoke Seger’s community corrections placement because he went to his wife’s house in violation of the protective order. After a hearing on August 24, 2006, the trial court revoked Seger’s EHD and ordered him to serve the balance of his sentence in the Department of Correction.

On September 25, 2006, Seger filed his Notice of Appeal. On December 27, 2006, the notice of completion of transcript was filed. On January 8, 2007, Seger filed his brief and appendix. On February 12, 2007, the State filed its brief.

Although there appears to be no procedural errors made by the parties, the Clerk's office did not consider this case fully briefed until February 28, 2008. Due to this delay, this appeal may be moot because Seger appears to have served his sentence. However we cannot confirm such a determination and will address the issue on its merits.

Discussion and Decision

Seger argues that the trial court erred in revoking his commitment to community corrections and ordering him to serve the remainder of his sentence in the DOC. Specifically, Seger argues that the trial court's determination that he violated the community corrections agreement when he allegedly violated a protective order was not supported by the preponderance of the evidence. Community corrections programs are an alternative to incarceration and placement is at the sole discretion of the trial court. Cox. v. State, 706 N.E.2d 547, 549 (Ind. 1999). Placement in a community corrections program such as EHD is "a matter of grace" and a "conditional liberty that is a favor, not a right." Id.

The State need only prove the alleged violations by a preponderance of the evidence. Id. at 551. We consider all evidence most favorable to the judgment of the trial court and not reweigh the evidence or assess the credibility of witnesses. Id. If the trial court's conclusion that the defendant violated any terms of community correction is

supported by substantial evidence of probative value, then we will affirm the trial court's decision to revoke placement. Id.

As a condition of his EHD, Seger was required to not engage in any criminal activity. Appellant's App. p. 46. The trial court bases its revocation on Seger's violation of a protective order. The protective order prevented Seger from contacting his wife. State's Ex. A. Seger admitted that he contacted his wife numerous times during the time period the protective order was in effect and that he was aware of the protective order. Tr. p. 76.

Seger's argument rests on his contention that he had been welcomed back by his wife and did not believe that the protective order was still in effect. This argument is unavailing since Indiana Code section 34-26-5-11 provides, "If a respondent is excluded from the residence of a petitioner or ordered to stay away from a petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection."

For all these reasons the trial court did not err when it revoked Seger's commitment to community corrections and ordered him to serve the balance of his sentence.

We affirm.

FRIEDLANDER, J., and ROBB, J., concur.